Supreme Court, U.S.
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No. 15-648

IN THE
Supreme Court of the United States

V.L.,

Petitioner,

v.

E.L., AND GUARDIAN AD LITEM, AS REPRESENTATIVE OF MINOR CHILDREN,

Respondents.

On Petition for a Writ of Certiorari to the Alabama Supreme Court

BRIEF OF *AMICI CURIAE* THIRTY-TWO FAMILY LAW PROFESSORS IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTEREST OF *AMICI CURIAE* 1

ARGUMENT 2

I. **Every State Provides for the Finality of Adoption Decrees, Which Have Important and Far-Reaching Consequences.** 2

A. *Laws in Every State Reflect the Important Public Policy of Finality of Adoption Decrees.* 3

B. *Important and Far-Reaching Consequences and Benefits Flow from Final Adoption Decrees.* 5

II. **Undermining the Finality of an Adoption Decree is Detrimental to Children and Their Families.** 7

A. *The Alabama Supreme Court Decision Has Far Reaching and Detrimental Impact on Children* 8

B. *Imperiling the Finality of Adoption Has Significant Impact on Adoptive Parents and the Stability of Families* 10

III. **Many Thousands of Parents and Children are Potentially Affected by the Alabama Decision.** 12

CONCLUSION 14

APPENDIX A—LIST OF SIGNATORIES 1a

TABLE OF AUTHORITIES

Cases

Application of L.L., 653 A.2d 873 (D.C. 1995) 13

C.V. v. J.M.J., 810 So.2d 692 (Ala. Civ. App. 1999) *rev'd on other grounds sub nom. Ex parte C.V.*, No. 1981316, 2000 WL 1717011 (Ala. Nov 17, 2000) *opinion withdrawn and superseded on reh'g*, 810 So. 2d 700 (Ala. 2001) 5

Ex Parte Bronstein, 434 So. 2d 780 (Ala. 1983) 6

Hastings v. Hastings, 291 Ga. 782 (2012) 7

Lehman v. Lycoming County Children's Servs. Agency, 458 U.S. 502 (1982) 8

Ratliff v. Meltzer, 487 N. E. 2d 836 (Ind. Ct. App. 1986) 8, 10

Santosky v. Kramer, 455 U.S. 745 (1982) 3, 8

Smith v. Org. of Foster Families for Equality and Reform, 431 U.S. 816 (1977) 3

Stanley v. Illinois, 405 U.S. 645 (1972) 8

Steed v. Steed, 877 So. 2d 602 (Ala. Civ App. 2003) 7

Statutes

15A V.S.A. § 3-706(c) 4

28 U.S.C. § 1738A (2000) 5

42 U.S.C. § 402(d) 6

Ala. Code 26-10A-25(d) 4

Code of Ala. § 26-10A-29 6

Code of Ala. §26-10A-26 5

O.C.G.A. § 19-11-100 5

O.C.G.A. § 19-11-3(12) 6

O.C.G.A. § 19-8-18 ..... 4, 5

O.C.G.A. § 19-8-9 6

O.C.G.A. § 19-9-40 *et. seq.* 5

Welfare Act of 1986, 42 U.S.C. §§ 670, et. *seq.* 13

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Barbara Woodhouse, *Of Babies, Bonding, and Burning Buildings: Discerning Parenthood In Irrational Action*, 81 Va. L. Rev. 2493 (1995) 7

Barbara Woodhouse, *Waiting for Loving: The Child's Fundamental Right to Adoption*, 34 Cap. U. L. Rev. 297 7

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COMM. ON INTEGRATING THE SCI. OF EARLY CHILDHOOD DEV., FROM NEURONS TO

NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT (Jack P Shonkoff & Deborah A. Philips eds. 2000) 9, 10

DOUGLAS E. ABRAMS & SARAH E. RAMSEY, CHILDREN AND THE LAW: DOCTRINE, POLICY AND PRACTICE (3d. ed. 2007) 3

Janet Hopkins Dickson, Comment, *The Emerging Rights of Adoptive Parents: Substance or Specter?*, 38 U.C.L.A. L. Rev. 917 (1991) 11

JOAN HOLLINGER, ADOPTION LAW & PRACTICE (2015), Lexis-Nexis. 3

JOHN BOWLBY, ATTACHMENT AND LOSS (2d ed. 1982) 9

JOSEPH GOLDSTEIN, ET AL., BEYOND THE BEST INTERESTS OF THE CHILD (2d ed. 1979) 9

Judith C. Daniluk & Joss Hurtig-Mitchel, *Themes of Hope and Healing: Infertile Couples' Experiences of Adoption*, 81 J. of Couns. & Dev. 389 (2003) 10

Leslie M. Singer, David M. Brodzinsky, Douglas Ramsay, Mary Steir and Everett Waters, *Mother-Infant Attachment in Adoptive Families*, 56 Child Dev. 1543 (1985) 9

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Robin DuRocher, *Balancing Competing Interests in Post-Placement Adoption Custody Disputes*, 15 J. Legal Med. 305 (1994) 11

Susan Livingston Smith and Jeanne A. Howard, *A Comparative Study of Successful and Disrupted Adoptions*, 65 Soc. Serv. Rev. 248 (1991) 11

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Anecdotal Accounts, https://www.quora.com/What-is-it-like-to-experience-a-failed-adoption ... 11

Hague Convention on the Civil Aspects of International Child Abduction (Convention), Oct. 24, 1980, T.I.A.S. No. 11670, S. Treaty Doc. No. 99–11 5

Pet. for Certiorari 7

Rules

Supreme Court Rule 37.2 1

Supreme Court Rule 37.6 1

INTEREST OF *AMICI CURIAE*[1]

Amici are law professors who specialize in family law and who have previous published on, or have interest in, the adoption rights that are threatened in this case. *Amici* have no personal stake in the outcome of this case, but have an interest in seeing that family law—especially adoption law—develops in a way that will protect the rights of the non-biological adoptive parents and the children involved.

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[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* affirm that no counsel for a party authored this brief in whole or in part, that no counsel or a party made a monetary contribution intended to the preparation or submission of this brief and no person other than *amici curiae* or their counsels made a monetary contribution to its preparation or submission.

Pursuant to Supreme Court Rule 37.2, the Respondents and the Petitioners received at least 10-days' notice of the intent to file this brief under the Rule, each party has consented to the filing of this brief, and copies of the consents are on file with the Clerk of the Court.

ARGUMENT

The Alabama Supreme Court's ruling refusing to recognize and enforce an adoption decree entered eight years ago by a Georgia court undermines the finality of adoption judgments and sets a dangerous precedent that jeopardizes the welfare of children and the stability of their adoptive families. *Amici* urge the Court to grant certiorari in order to reverse the Alabama court's anomalous and harmful decision.

I. Every State Provides for the Finality of Adoption Decrees, Which Have Important and Far-Reaching Consequences.

The Supreme Court should grant certiorari because of this case's potential to wreak havoc on the finality of adoption orders. Finality of the adoption decree is essential to the concept of adoption. It is what distinguishes adoption from legal relationships that are easily formed but easily dissolved, such as temporary custody, fostering and guardianship. The State, in its *parens patriae* role, grants finality to honor and support the parent-child bonds of adoption and recognize the adoptive family as legally coequal to the biological family. It is crucial – to adoptive parents, biological parents, and most especially, to the adopted children – that a final decree is really final.

A. Laws in Every State Reflect the Important Public Policy of Finality of Adoption Decrees.

Adoption laws of every state, without exception, endorse and protect the integrity of the adoptive family. *See* DOUGLAS E. ABRAMS & SARAH E. RAMSEY, CHILDREN AND THE LAW: DOCTRINE, POLICY AND PRACTICE 707 (3d. ed. 2007). Once the adoption decree is final, the law extends to the adoptive family the same legal and constitutional protections as any other family. *See Smith v. Org. of Foster Families for Equality and Reform*, 431 U.S. 816, 844 n.51 (1977) (noting that "[a]doption... is recognized as the legal equivalent of biological parenthood). Family members can be secure in knowing the parent-child relationship can only be severed in cases where a court finds clear and convincing evidence of parental unfitness, just as in cases involving biological children. *Santosky v. Kramer*, 455 U.S. 745, 769-70 (1982). While adoption decrees can be challenged for limited periods of time, state laws typically recognize only a few grounds for such challenges, such as fraud, duress, incapacity, and failure to notify the biological parents. JOAN HOLLINGER, ADOPTION LAW & PRACTICE § 8.02 (2015), Lexis-Nexis.

The Uniform Adoption Act (UAA) also supports this important policy. NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, UNIFORM ADOPTION ACT (1994). http://www.uniformlaws.org/shared/docs/adoption/uaa_final_94.pdf. The UAA reflects a consensus among the most highly respected and

authoritative scholars on the importance of finality in adoption.

The UAA repeatedly stresses the importance of finality of adoptions. "A basic policy of this Act is to facilitate the completion of consensual adoptions, expedite the handling of contested adoption or termination proceedings, and *secure the finality of decrees of adoption* " NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, UNIFORM ADOPTION ACT (1994), http://www.uniformlaws.org/shared/docs/adoption/uaa_final_94.pdf (emphasis added). UAA §3-706, entitled "Finality of Decree", states that a "decree of adoption is a final order for purposes of appeal when it is issued and becomes final for other purposes upon the expiration of the time for filing an appeal, if no appeal is filed, or upon the denial or dismissal of any appeal filed within the requisite time." *Id.* The UAA also proposes a six-month limitation for any challenge whatsoever to a final decree of adoption. NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, *§ 3-707: Challenges to Decree in* 91 UNIFORM ADOPTION ACT (1994), http://www.uniformlaws.org/shared/docs/adoption/uaa_final_94.pdf. State laws in accordance with this recommendation include Georgia and Vermont. O.C.G.A. § 19-8-18; 15A V.S.A. § 3-706(c); *see also* Ala. Code 26-10A-25(d) ("A final decree of adoption may not be collaterally attacked, except in cases of fraud or where the adoptee has been kidnapped, after the expiration of one year from the entry of the final decree and after all appeals, if any."). Among the states that have adopted a version of the Uniform Adoption Act are Arkansas, Louisiana, Montana, North Dakota, Ohio and Oklahoma. *C.V.*

v. J.M.J., 810 So.2d 692, 699 n.1 (Ala. Civ. App. 1999) *rev'd on other grounds sub nom. Ex parte C.V.*, No. 1981316, 2000 WL 1717011 (Ala. Nov. 17, 2000) *opinion withdrawn and superseded on reh'g*, 810 So. 2d 700 (Ala. 2001).

In addition to the UAA, federal, state and international laws have expressed the policy of finality in decrees establishing parental rights and responsibilities generally by requiring recognition of home state custody determinations and implementing interstate rules for the uniform enforcement of child support judgments. *See* Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A (2000); O.C.G.A. § 19-9-40 *et. seq.* (Uniform Child Custody Jurisdiction and Enforcement Act); O.C.G.A. § 19-11-100 (Uniform Interstate Family Support Act); Hague Convention on the Civil Aspects of International Child Abduction (Convention), Oct. 24, 1980, T.I.A.S. No. 11670, S. Treaty Doc. No. 99–11.

B. Important and Far-Reaching Consequences and Benefits Flow from Final Adoption Decrees.

Shortly after an adoption decree is entered, in every state, they are insulated from collateral and direct challenges through combination of limits on grounds for challenges and limits on the time for bringing a challenge. For instance, in Georgia, adoption decrees cannot be challenged more than six months after their entry. O.C.G.A. § 19-8-18; *see also* Code of Ala. § 26-10A-26 (requiring that appeals be filed within fourteen days of entry of adoption decree). Once that adoption decree is finalized, the

law treats the relationship between adoptive parents and children as equivalent to that of biological parents and children. *See, e.g.*, O.C.G.A. § 19-8-9(a)(2) ("The adopted individual shall enjoy every right and privilege of a biological child of that petitioner."); Code of Ala. § 26-10A-29 ("After adoption, the adoptee shall be treated as the natural child of the adopting parent or parents and shall have all rights and be subject to all of the duties arising from that relation, including the right of inheritance."); *Ex Parte Bronstein*, 434 So. 2d 780, 782 (Ala. 1983) ("overall policy" of the adoption statute is "to treat adopted children in all respects as natural children"). The law entitles adoptive children to inherit under the same laws as biological children. O.C.G.A. § 19-8-9(a)(2); Code of Ala. § 26-10A-29. Federal law entitles adoptive children to the same social security benefits as biological children. 42 U.S.C. § 402(d). Thus, adoptive children and biological children are afforded the same legal rights.

Consequently, an adoptive parent is treated no differently than if he or she had been the biological parent of the adopted child, and the law places upon adoptive parents the same responsibilities as biological parents, including to provide adequate care for the child, and to pay child support. *E.g.*, O.C.G.A. § 19-11-3(12) (defining "parent" as "natural or adoptive" for purposes of the Child Support Recovery Act). In particular, in those adoptions where one biological parent co-parents with an adoptive parent, a common adoption family structure, the adoptive parent stands on equal footing with the biological parent when it comes to

custody and visitation in the event of a subsequent separation or divorce. *Steed v. Steed*, 877 So. 2d 602, 605-606 (Ala. Civ. App. 2003) (husband who adopted wife's child "stands on equal footing with the mother because he legally adopted the daughter"); *Hastings v. Hastings*, 291 Ga. 782, 794 (2012) ("[A]n adoptive parent stands on the same footing and has the same rights and obligations as a biological parent.").

II. Undermining the Finality of an Adoption Decree is Detrimental to Children and their Families.

In *V.L. v. E.L.*, both parents had lived with and co-parented their children since birth and the children have formed deep attachments to both of their parents. *Pet. for Certiorari*, at 4-7

The bond between parent and child is the most fundamental of human relationships. Barbara Woodhouse, *Of Babies, Bonding, and Burning Buildings: Discerning Parenthood In Irrational Action*, 81 Va. L. Rev. 2493, 2509 (1995). While an increasing number of marriages end in divorce, parent-child relationships are intended to be ones that last a lifetime. Barbara Woodhouse, *Waiting for Loving: The Child's Fundamental Right to Adoption*, 34 Cap. U. L. Rev. 297, 318-19 & n.136.

The parent-child bond enjoys constitutional as well as statutory protection, in recognition of its importance to parents, children and society. Because it is so fundamental, courts are prohibited from severing the parent child relationship absent clear and convincing evidence of parental unfitness.

Santosky, 455 U.S. at 769-70. Thus, normally, when parents (biological, adoptive, or a combination of biological and adoptive) separate, the parents retain parental rights, and the children retain a right to a relationship with both parents, absent a showing that contact is harmful to the child. *See* AM. LAW INST., PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION § 2.02 (2005), LexisNexis. But in this case, the Alabama Supreme Court terminated V.L.'s parental rights completely, treating the adoption as a nullity. The Alabama court's decision harms children, traumatizes adoptive parents, and destabilizes families. Awareness that adoption decrees are not truly final will make it more difficult for adoptive parents and their children to form the mutually reinforcing psychological and emotional bonds that are so critical to children's well-being. *See Ratliff v. Meltzer*, 487 N. E. 2d 836 (Ind. Ct. App. 1986).

A. The Alabama Supreme Court Decision Has a Far Reaching and Detrimental Impact on Children.

A rule that permits a court to refuse to recognize and enforce an out of state adoption decree has detrimental consequences for children. If there is one principle undergirding child and family law, it is the importance of stability and continuity to the welfare of the child. *Stanley v. Illinois*, 405 U.S. 645, 652-53 (1972) ("[T]he State registers no gain toward its declared goals when it separates children from the custody of fit parents.") *Lehman v. Lycoming County Children's Servs.* Agency, 458 U.S. 502, 513-14 (1982); Children need stability in order to form

strong bonds essential to their physical and psychological development. JOHN BOWLBY, ATTACHMENT AND LOSS, 365 (2d ed. 1982). Quintessential to the development of a child is a nurturing relationship with their caregiver. COMM. ON INTEGRATING THE SCI. OF EARLY CHILDHOOD DEV., FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 229–66 (Jack P Shonkoff & Deborah A. Philips eds. 2000). It is irrelevant whether the attachment is to a biological relative. Indeed, a 1985 study by Singer et al. found no differences in mother-infant attachment between nonadopted and adopted pairs, at least in intraracial adoptions. Leslie M. Singer, David M. Brodzinsky. Douglas Ramsay, Mary Steir and Everett Waters, *Mother-Infant Attachment in Adoptive Families*, 56 Child Dev. 1543 (1985). What matters is that the attachment figure is an adult who, "on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills the child's psychological needs, as well as the child's physical needs." JOSEPH GOLDSTEIN, ET AL., BEYOND THE BEST INTERESTS OF THE CHILD 98 (2d ed. 1979). These relationships are fundamental to the normal development of a child's body and brain. *Id.* at 5.

Once established, continuity in such relationships is critical to the child's continued development. Children deprived of contact with a parent to whom they have become attached "not only suffer separation distress and anxiety but also setbacks in the quality of their next attachments, which will be less trustful." *Id.* at 33. Instability in the parent's life can cause an imbalance in the child's life, which disrupts the secure attachments that have formed.

COMM. ON INTEGRATING THE SCI. OF EARLY CHILDHOOD DEV., FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 234 (Jack P Shonkoff & Deborah A. Philips eds. 2000). And the deprivation of a parent can cause tremendous emotional and psychological damage to the child. Development of the child depends on both stability and flexibility in the child's life. COMM. ON INTEGRATING THE SCI. OF EARLY CHILDHOOD DEV., FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 90 (Jack P. Shonkoff & Deborah A. Philips eds. 2000).

B. Imperiling the Finality of Adoption Has Significant Impact on Adoptive Parents and the Stability of Families.

Attacks on the finality of adoption pose severe risks of psychological harm not only to the children, but to the parents and the entire family.

Adoptive parents may experience acute distress at the thought of their adoptive child being taken away from them. Judith C. Daniluk & Joss Hurtig-Mitchel, *Themes of Hope and Healing: Infertile Couples' Experiences of Adoption*, 81 J. of Couns. & Dev. 389, 398 (2003). While this distress may be present in the early stages of any adoption, the entry of a final decree marks a passage that enhances secure attachments. *Id.* Parents and children who are faced with the reality that the relationship remains open to attack indefinitely will suffer severe harm to the stability of their relationship and individual well being. *See Ratliff v. Meltzer*, 487 N. E. 2d 836 (Ind., Ct. App. 1986) ("[F]inality of

[adoption] decrees is desirable in order to prevent the emotional strain which would otherwise be imposed upon both the adoptive child and parents, making it difficult for a normal parent-child relationship to develop.") Under the precedent established by the Alabama decision, even an adoptive child and parent who had crossed the bridge to full familial status would be deprived of the security afforded to every other legal parent-child relationship protected by our laws and our Constitution.

Disrupted adoptions lead parents to feelings of failure, guilt and sorrow. Susan Livingston Smith and Jeanne A. Howard, *A Comparative Study of Successful and Disrupted Adoptions*, 65 Soc. Serv Rev. 248, 248 (1991). Prospective parents in disrupted adoptions – adoptions that are not completed, *e.g.*, because the biological parent withdraws consent – report as much grief as the biological parent would experience in giving up the child for adoption, and in fact, losing a prospective adopted child back to the biological parents may be psychologically similar to experiencing the death of one's own biological child. *See* Robin DuRocher, *Balancing Competing Interests in Post-Placement Adoption Custody Disputes*, 15 J. Legal Med. 305, 328 (1994); Janet Hopkins Dickson, Comment, *The Emerging Rights of Adoptive Parents: Substance or Specter?*, 38 U.C.L.A. L. Rev. 917, 967-69 (1991); see also anecdotal accounts at *http://stillstandingmag.com/2014/02/grieving-child-never-died-grief-failed-adoption; https://www.quora.com/What-is-it-like-to-experience-a-failed-adoption*, and *http://www.theatlantic.com/*

sexes/archive/2013/04/the-dark-sad-side-of-domestic-adoption/275370.

The instability and lack of finality in adoption proceedings can bring about tremendous emotional and psychological damage to both the child as well as the adoptive parents. In the best interests of the child, these two categories – finality and stability – are critical in preventing any damage to the parties involved.

III. Many Thousands of Parents and Children are Potentially Affected by the Alabama Decision.

Adoption is woven into the fabric of our society and plays an important role in public policy. The family is the basic unit of society. A society cannot function if the status of parent and child comes and goes as families move from one state to another.

The 2000 Census counted more than 2 million adoptees as members of their adoptive parents' households. Adopted Children and Stepchildren: 2000, Census 2000 Special Reports, www.census.gov/prod/ 2003pubs/censr-6. As of 2008, over 135,000 children were being adopted each year – nearly 2300 in Alabama and nearly 4000 in Georgia. CHILD WELFARE INFO. GATEWAY, *How Many Children Were Adopted in 2007-2008?*, U.S. DEP'T HEALTH & HUMAN SERVS. 10–11 (Sept. 2011), https://www.childwelfare.gov/pubPDFs/adopted0708.pdf. In the same year, the adoption rate per 100,000 adults (i.e., persons aged 18 or older who became adoptive parents) was over 58 nationwide, and

higher in Alabama (over 63); in Georgia it was nearly 54. *Id.* at 12–13.

Although this case involves adoption by an individual who co-parented the child from birth, the case has implications for all types of adoptions. Adoptions with public agency involvement account for about one third of all adoptions. *See* CHILDREN'S BUREAU, *The AFCARS Report*, U.S. DEP'T HEALTH & HUMAN SERVS. 5 (July 2015), http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf. In 2014, 107,918 children were waiting to be adopted from foster care. *Id.* at 1. Both federal and state public policy favors adoption of these children into a safe and caring home if they cannot be reunited with their birth parents within a reasonable time. *See Application of L.L.*, 653 A.2d 873, 888 (D.C. 1995) (discussing the Adoption Assistance and Child Welfare Act of 1986, 42 U.S.C. §§ 670, et. *seq.*, legislative history, treatises and precedents discussing the policy preference not to leave children lingering in foster care). If potential adoptive parents believed that the child's biological parents could challenge the adoption decree at any time, the likelihood that these children would be adopted would drop significantly.

The finality of adoption decrees affects each and every adoptive family and every state agency caring for displaced children. Adoption forms a life-long legal relationship, with implications affecting every area of the law in which parent-child status is important, from public welfare laws to laws on inheritance. The Alabama Court's decision resolves

what should have been a simple custody case by imperiling the stability of adoptions everywhere.

If a final adoption decree can be reopened and declared a nullity eight years after it is entered, prospective adoptive parents may be deterred from adopting in the first instance, and those who complete adoptions would live indefinitely under a shadow of uncertainty. Such a rule directly contravenes and undermines public policies favoring adoption.

The Alabama Supreme Court's decision could have broad, significant and seriously detrimental impact on the lives of parents and children nationwide.

CONCLUSION

For the foregoing reasons, *amici* respectfully ask this Court to grant the Petition for Writ of Certiorari and reverse the decision of the Alabama Supreme Court.

Respectfully Submitted,

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APPENDIX A—LIST OF SIGNATORIES*

Barbara Woodhouse is among the nation's foremost experts on children's rights. She joined the Emory University School of Law faculty in 2009 as the L. Q. C. Lamar Chair in Law. Her scholarship and teaching focus on child law, child welfare, comparative and international family law, adoption, and constitutional law.

Nancy E. Dowd is Professor and David Levin Chair in Family Law at the University of Florida Levin College of Law, and Director Emeritus of the Center on Children and Families. She has published widely on a range of family law issues including adoption and nontraditional families, and participated with other family law scholars in briefs before state and federal appellate courts.

Jamie R. Abrams is an Assistant Professor of Law at the University of Louisville Brandeis School of Law in Louisville, KY. She teaches Family Law, Women and the Law, Torts, and Legislation. Her prior scholarship on reproductive autonomy, gendered citizenship, and masculinities theory has been published in top law reviews, such as the Florida State Law Review, Cardozo Law Review,.and the Yale Journal of Law & Feminism (available at http://ssrn.com/author=862554). She received the University of Louisville's Presidential Exemplary

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* University affiliation of the professors is given for identification purposes only, and implies no endorsement by the universities.

Multicultural Law Teaching Award and she was nominated for the University's LGBT Faculty Ally award.

Libby Adler is a Professor of Law at Northeastern University School of Law. She teaches Constitutional Law, Sexuality, Gender and the Law, Family Law, Administrative Law and Trusts and Estates. Adler has written extensively on sexuality, gender, family and children, including foster care, and draws heavily from queer and critical theory She is a co-editor of the casebook *Mary Joe Frug's Women and the Law* (4th ed.).

Aziza Ahmed is Associate Professor of Law at Northeastern University School of Law She is an expert in laws related to health, gender, and sexuality.

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Michael Boucai teaches Family Law and Criminal Law at SUNY Buffalo Law School, where he has also offered courses on Law & Sexuality and

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Kathryn Webb Bradley is a professor of the practice of law, the director of Legal Ethics, and the administrator for the Capstone Project at Duke Law School. She teaches in the areas of legal ethics and family law.

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